

ANNEXATION AGREEMENT

This Annexation Agreement (“Agreement”) is made and entered into on _____ (“Effective Date”) by and between the City of Columbus, Ohio, a municipal corporation, (“City”) and Berkshire Township, Delaware, County, Ohio, (“Township” and collectively “the Parties”) duly authorized by Ordinance No. _____ adopted _____ by the Columbus City Council, and Resolution _____ adopted by the Berkshire Township Board of Trustees, and pursuant to the provisions of Ohio Revised Code Sections 709.192.

WHEREAS, the Parties are political subdivisions located entirely within the State of Ohio; and

WHEREAS, the City owns certain real property located in the Township that the City seeks to annex to the City upon the property becoming contiguous to the City; and

WHEREAS, the Parties wish to cooperate in matters affecting the territory to which this Agreement pertains; and

WHEREAS, the City and the Township have determined that it is in the best interest of their respective residents, citizens, and taxpayers to enter into this Agreement upon the terms hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and the Township agree as follows:

TERMS AND CONDITIONS

1. **Annexation Property.** The Parties agree that the City may annex the City-owned parcel(s) identified in Exhibit A and listed in Exhibit B (“Annexation Property”), which are located in the Township and include the territory of the City’s Hoover Reservoir and adjacent parkland.

2. **Annexation Procedure.** The City shall seek to annex the Annexation Property pursuant to the Expedited Type 1 annexation procedure per Ohio Revised Code Sections 709.021 and 709.022, and the boundaries of any annexed property shall be conformed pursuant to Ohio Revised Code Section 503.07 in order to exclude the Township from such area(s). Upon the exclusion of any such parcel from the Township, the City shall not be required to make any compensation payments of any kind to the Township and specifically shall not be required to make any compensation payments as set forth in ORC 709.19. If the provisions of Expedited Procedure No. 1 are subsequently repealed or are modified in such a way as to adversely impact the purpose and intent of this Agreement, the Parties shall, upon the written request of a Party, meet within thirty (30) days after receipt of such request and revise the affected portion(s) of this Agreement in such a manner so as to accomplish the purpose and intent of this Agreement, with time being of the essence.

3. **Other Annexations.** The City may annex any other City-owned property located in the Township pursuant to any available annexation procedure but shall not conform the boundaries of such annexed property unless the Parties, prior to the filing of an annexation petition by the City, amend Exhibit A and Exhibit B to include the property to be annexed in accordance with section 12 of this Agreement. If such other City-owned property is annexed, the City shall not approve any re-zoning of the annexed property for residential, commercial, or industrial use, and shall maintain the Annexation Property solely for public purposes. For the purposes of this Agreement, public purposes shall mean any governmental service or activity performed by the City related to water, sewer, parks, conservation efforts, passive recreation or any other related governmental services that are low impact and compatible to the surrounding area. Notwithstanding the foregoing, from time to time the City may elect to grant utility and/or access easements and otherwise enter into property swaps or other property transactions in order to resolve property encroachments. The Parties agree to negotiate, in good faith, other matters permitted to be agreed upon under ORC 709.192 and commit any changes to this Agreement, in writing, upon approval by the legislative authorities of the City and Township.

4. **Annexation of Privately Owned Parcels.** If, during the term of this Agreement, an annexation petition is filed seeking to annex to the City any privately owned property in the Township, the City shall refuse to accept the petition and refuse to furnish any City services to the parcel(s) should they be annexed to the City or any other municipality; however, the Parties may mutually agree to amend this agreement to allow such annexation in accordance with section 12 of this Agreement.

5. **Utility Service.** This Agreement does not provide for any new, extended, or expanded utility service by the City to properties in the Township, other than properties owned by the City, and such service shall not be provided by the City unless and until any property seeking utility service is annexed to the City in accordance with City policy.

6. **City's Ownership Rights in Hoover Reservoir and Annexation Property.** Hoover Reservoir is a vital regional drinking water source, and the Parties agree to take no action to impede or divert these water resources. The City shall maintain the Annexation Property for the primary purpose of management and protection of Hoover Reservoir as a drinking water source and shall not convert any parcels or splits of parcels for purposes other than for utilities and for public purposes as defined in Section 3 of this Agreement, provided that the City shall continue to have all rights incident to its ownership of the property. For the avoidance of doubt, the City shall not approve any re-zoning of the Annexation Property for residential, commercial, or industrial use, and shall maintain the Annexation Property solely for public purposes. Notwithstanding the foregoing, from time to time the City may elect to grant utility and/or access easements and otherwise enter into property swaps or other property transactions in order to resolve property encroachments.

7. **Public Accessibility to Hoover Reservoir Parkland.** All existing and future City parkland adjacent to Hoover Reservoir that is open to the public will remain accessible to Delaware County residents similar to Franklin County residents and in accordance with applicable hours of

operation and rules of use. The City retains the exclusive right to reduce parkland as may be necessary for operation of Hoover Reservoir in support of the City's utilities purposes.

8. **Watershed management.** The Parties agree to maintain an open, good-faith dialogue for matters related to the City's Watershed Management Program for Hoover Reservoir.

9. **Term.** The initial term of this Agreement (the "Initial Term") shall be for a period of thirty-five (35) years, commencing on the Effective Date. The Parties may agree to extend this Initial Term for an additional period of no less than ten (10) years, as agreed upon by the parties. Any extension of this Agreement must be approved by Columbus City Council and Berkshire Township Board of Trustees. The "Term" of this Agreement shall include the Initial Term and any extensions thereof pursuant to this Section.

10. **Alternative Dispute Resolution.** In the event the Parties have a dispute as to any of the terms or applicability of this Agreement, the Parties agree to use their best efforts to resolve the dispute through a mutually acceptable non-binding mediation process prior to any Party filing a lawsuit in connection with such dispute. Each Party participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by the Parties. If a mediator has not been selected by the Parties within twenty (20) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, then within ten (10) days thereafter, each Party shall select one qualified mediator and, within five (5) days of the date of their selection, the two persons so selected shall select a third qualified mediator who will serve as the sole mediator for the dispute. Nothing in this section prevents either party from filing a lawsuit or pursuing other remedies that may be available.

11. **Default; Opportunity to Cure; Remedies.** A failure to comply with the terms of this Agreement shall constitute a default hereunder. A Party in default shall have ninety (90) days after receiving written notice from another Party of the event of default to cure the default. If the Party has taken no action to diligently pursue curing the default, the defaulting Party is in breach of this Agreement and a non-defaulting Party may sue the defaulting Party for specific performance or injunctive relief under this Agreement or for damages or both and may pursue such other remedies as may be available at law or in equity, including as provided in Section 709.192 of the Ohio Revised Code.

12. **Amendment.** This Annexation Agreement may only be amended, revised or altered pursuant to an amendment in writing, executed by the Parties, and properly promulgated and approved by their respective legislative authorities.

13. **Validity of Agreement.** In the event that this Agreement, or any of its terms, conditions or provisions, is challenged by any third party in a court of law, the Parties agree to cooperate with one another and to use their best efforts in defending this Agreement with the object of upholding this Agreement. Each Party shall bear its own costs in any such proceeding challenging this Agreement or any term or provisions thereof.

14. **Effectuation of Agreement.** The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, petitions and similar documents, and to take such other actions as are necessary to effectuate the purposes of this Agreement.

15. **Successors in Interest.** This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors; subject, however, to the specific provisions hereof. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence. This Agreement is not intended to and does not create rights or benefits of any kind for any persons or entities that are not a Party to this Agreement.

16. **Notice.** All notices, demands, requests, consents or approvals shall be addressed to:

a. Berkshire at:

Berkshire Township Board of Trustees
1454 Rome Corners Road
Galena, Ohio 43021
Attention: Township Administrator

b. Columbus at:

The City of Columbus, Ohio
Department of Public Utilities
910 Dublin Road
Columbus, Ohio 43215
Attention: Director of Public Utilities

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, consents, demands, requests or other communications shall be sent.

17. **Governing Law.** This Agreement shall be governed exclusively by and construed in accordance with the laws of the state of Ohio, and in particular, ORC 709.192 in effect as of the date of execution of this Agreement. In the event that any provision of ORC 709.192 is amended or is supplemented by the enactment of one or more new sections of the Revised Code relating to annexation agreements, the Parties shall follow the provisions of ORC 709.192 existing on the date of execution of this Agreement, unless the Parties agree to amend this Agreement in accordance with Section 12 of this Agreement.

18. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original copy of the Agreement.

IN TESTIMONY WHEREOF, the Parties have caused multiple counterparts hereof to be duly executed on or as of the Effective Date of this Agreement.

**BERKSHIRE TOWNSHIP
(DELAWARE COUNTY), OHIO**

Date: _____

By: _____
Trustee

By: _____
Trustee

By: _____
Trustee

APPROVED AS TO FORM:

Law Director
Berkshire Township

Date

CITY OF COLUMBUS, OHIO

Date: _____

By: _____
Director of Public Utilities
City of Columbus, Ohio

APPROVED AS TO FORM:

Zach Klein, Columbus City Attorney

Date